

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1178 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ARVINDBHAI HIRABHAI PATEL

Versus

STATE OF GUJ

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Appearance:

MR DK ACHARYA, Advocate for the Petitioner.

MR.K.P.RAVAL,ADDL.,PUBLIC PROSECUTOR for the Respondent .

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 28/10/96

ORAL JUDGEMENT

The petitioner by this petition under Article 226 of thhe Constitution of India has challenged the order passed by the Deputy Conservator of Forest, Sabarkantha confirming in appeal by the learned Additional Sessions Judge, Sabarkantha at Himatnagar. By virtue of the order passed by the Deputy Conservator of Forest, the tempo belonging to the petitioner has been confiscated for

carrying forest goods.

It appears that this Court ( Coram: R.J.Shah,J as he then was ) by its order dated 21st July, 1989 regarding the interim custody of the vehicle in question on certain terms and conditions in favour of the petitioner. To-day when this petition came up for hearing, Mr. K.P.Raval, learned Additional Public Prosecutor, appearing for the respondent, has submitted that the order passed in appeal by the learned Additional Sessions Judge is without jurisdiction as, in his submission, the learned Additional Sessions Judge is not competent to decide an appeal under section 61-D of the Forerst Act. In support of his submission, reliance reliance is placed on the decision of this Court in the case of State of Gujarat vs Siddik Haji Ibrahim Patel (1996) 1 Guj.L.R. 798. This Court has taken a view that section 61-D of the Forest Act confers jurisdiction on persona designata , namely, the Sessions Judge, and hence, the Sessions Judge can alone hear the appeal. The order of the Additional Sessions Judge is, therefore, without jurisdiction and liable to be quashed under Article 226 of the Constitution of India. In view of the ruling of this Court , it is required to be held that the order passed in appeal by the learned Additional Sessions Judge is without jurisdiction. In the circumstances, the matter is required to be remanded to the learned Sessions Judge, Sabarkantha at Himatnagar to hear and decide the appeal afresh in accordance with law.

In the result, this petition is allowed. The judgment and order dated 5-11-1988 passed by the learned Additional Sessions Judge, Sabarkantha at Himatnagar in Criminal Appeal No. 19/88 is set aside and the matter is remanded to the learned Sessions Judge, Sabarkantha at Himatnagar for hearing and disposal of the said appeal afresh in accordance with law. Considering the fact that the alleged offence under the Forest Act had taken place on 14-6-88, the learned Sessions Judge is directed to give top priority to the said appeal and decide the same within four weeks from the receipt of the writ of this Court. Till the hearing and disposal of the appeal, the order for interim custody of the vehicle in question passed by this Court on 21st July, 1989 shall continue. Rule is made absolute accordingly with no order as to costs.

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